

Sheeler-Mitchell, Charmaine

From: Tim Latimer <raildude2000@sbcglobal.net>
Sent: Monday, November 28, 2016 11:37 AM
To: OSHRC_FOIA
Cc: 'Ryan Brennan'
Subject: Investigation # 1003-1004
Attachments: 2016_11_23_09_33_34.pdf

Regional Freedom of Information Officer
U.S. EPA, Region 10
Office of External Affairs
1200 6th Avenue (CEC-142)
Seattle, WA 98101



RE: Formal Request (URGENT REQUEST DUE TO TIME CONSTRAINTS) Investigation # 1003-1004

To Whom It May Concern:

The enclosed is an activity report from the EPA's investigation into an unsafe work environment incident. We are looking for any summary, recording and/or signed statement from Mr. John Myre, relating to the incident. We would also like a complete copy of any files pertaining to the incident, along with all final reports/findings and fines that may have been accessed as a result of the investigation.

Thank you in advance for your time and consideration of the above and we look forward to your response. Should you have any question please contact Mr. Timothy J. Latimer, as listed below at your earliest opportunity.

Truly yours:

Timothy J. Latimer
Brennan Law Firm, P. C.

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Ryan Brennan - 618-236-2121

Indiana Office
Illinois Office

United States Environmental Protection Agency
Criminal Investigation Division
Investigative Activity Report

Case Number
1003-0094

Case Title:
Dakota Southern Railway Company ?

Reporting Office:
Boise, ID, Resident Office

Subject of Report:
3-27-2013 interview BACON

Activity Date:
March 27, 2013

Reporting Official and Date:
Bryan Byrd
Special Agent

Approving Official and Date:
Tyler C. Amon
Special Agent in Charge

02-APR-2013, Signed by: Bryan Byrd

02-APR-2013, Approved by: Kelly J. O'Neill
Assistant Special Agent in Charge

SYNOPSIS

On March 27, 2013, at approximately 1624 hours United States Environmental Protection Agency (EPA)-Criminal Investigation Division (CID) Special Agent (SA) BRYAN C. BYRD and EPA Resident Agent in Charge (RAC) DARIN MUGLESTON contacted CHARLES BACON at the Riverside Motel located at 10560 US Highway 12, Orofino, Idaho. SA BYRD and RAC Mugleston identified themselves to BACON through a display of official credentials and the meeting began.

DETAILS

On March 27, 2013, at approximately 1624 hours United States Environmental Protection Agency (EPA)-Criminal Investigation Division (CID) Special Agent (SA) BRYAN C. BYRD and EPA Resident Agent in Charge (RAC) DARIN MUGLESTON contacted CHARLES BACON at the Riverside Motel located at 10560 US Highway 12, Orofino, Idaho. SA BYRD and RAC Mugleston identified themselves to BACON through a display of official credentials and the meeting began.

BACON stated he is originally from Missouri. He has a long history in the restaurant business and formally had his own barbeque restaurant. He currently is driving spikes for BOUNTIFUL GRAIN GRAIG MOUNTAIN (BGCM) railroad. BGCM is owned by MIKE WILLIAMS.

BACON stated he was hired by JOHN MYRE on December 31, 2012, as a bridge maintenance worker for DAKOTA SOUTHERN RAILWAY COMPANY (DSR). He was hired with the help of fellow bridge maintenance worker JUSTIN SURFACE. DSR is based out of Missouri and is owned by MIKE WILLIAMS. DSR has a subcontract in Northern Idaho to maintain rail bridges.

BACON stated MYRE was his boss on the bridge crew. His co-workers were ADAM RODGERS, JASON MCLEMORE, and JUSTIN SURFACE.

BACON stated on January 14, 2013 he his crew was given safety training by BILL BARNHOLT. BACON stated the training covered bridge worker safety but did not cover anything to do with lead.

BACON stated BARNOLT did cover some respiratory use. BARNOLT instructed everyone on the importance of wearing a respirator when mixing polymer concrete.

BACON stated he believed one of his first projects on the crew was to conduct maintenance work on the "ice-breakers" attached to a bridge in Kamiah, Idaho. BACON explained "ice-breakers"

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**United States Environmental Protection Agency
Criminal Investigation Division
Investigative Activity Report**

Case Number

1003-0094

BACON stated he needed the work so he did not admit himself to the hospital.

BACON stated doctors conducted lead poisoning tests on MCLEMORE and told him to come back in the morning for the results but he likely had lead poisoning. The doctors did not want him to leave the hospital.

BACON stated on January 29, 2013 at approximately 0630 hours he went to work and told MYRE he drove MCLEMORE to the emergency room the night before. He told MYRE MCLEMORE more than likely had lead poisoning.

BACON stated in response MYRE told him, "We probably should get dusk masks."

BACON stated MYRE then sent ROBERT CLEMENTS to acquire dusk masks. CLEMENTS is a worker for BOUNTIFUL GRAIN GRAIG MOUNTAIN (BGCM) railroad. CLEMENTS went and acquired some dusk masks.

BACON stated he and SURFACE then drove in a pick-up truck and traveled to the Kamiah worksite. During the ride over both of them agreed that if MCLEMORE had lead poisoning they probably did as well. They also discussed that none of them should still be working at the site.

BACON stated he just thought he needed his job to pay the bills. He could not lose his job.

BACON stated overall MYRE is a prick to work for. An example is that on a previous bridge job both he and MYRE were working on top of a bridge that was suspended a good ways in the air. MYRE requested BACON to work at heights and in situations that obviously needed fall protection. BACON stated he requested fall protection from MYRE.

BACON stated MYRE responded to his question and said, "Why don't you reach in your pocket and go get yourself one. I got mine from DSR."

BACON stated he did not appreciate MYRE's disregard for safety. He finished the job without incident but did not like worker without fall protection.

BACON stated after SURFACE and he got to the jobsite on January 29, 2013, MYRE ordered them to continue to torch cut the steel "I" beams.

BACON stated he was wondering why MYRE ordered them back to work after he knew MCLEMORE more than likely had lead poisoning. The whole thing was crazy but he had to keep his job so he did not challenge MYRE.

BACON stated CLEMENTS showed up to the job site around 0800 hours with dust masks, and MSA half-masks.

BACON stated he and SURFACE continued to torch the steel beams while wearing the masks provided by CLEMENTS for approximately two hours.

BACON stated he looked at the masks provided my CLEMENTS and read the instructions. The

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BACON stated he finished his chelation pills on March 2, 2013 and came back to work for a different MIKE WILLIAMS rail company named St. MARIES RIVER RAILROAD COMPANY (SMR), St. Maries, Idaho. BACON stated he has mostly been driving rail stakes for SMR.

At this point in the interview BACON gave SA BYRD his medical records and his personal calendar regarding this matter. Both the medical records and personal calendar are stored in the Boise Resident Office as reflected on the chain-of-custody attached to this report.

The investigative contact with BACON ended at approximately 1800 hours.

ATTACHMENT

.Chain of Custody

Medical

Medical 2

Medical 3

Medical 4

.Calendar

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UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1120 20TH STREET, NW, 9TH FLOOR
WASHINGTON, DC 20036-3457

FOIA Requester Service Center

Phone: (202) 606 - 5410
Fax: (202) 606 - 5417

December 5, 2016

tim@feladlc.com

Timothy J. Latimer
Brennan Law Firm, P.C.



RE: Freedom of Information Act ("FOIA") Request:
FOIA File No. 17-0012
Request received November 28, 2016

Dear Mr. Latimer:

Pursuant to our December 5, 2016 telephone conversation, this letter confirms the withdrawal of your FOIA request to the Occupational Safety and Health Review Commission ("Review Commission") seeking "any summary, recording and/or signed statement from Mr. John Myre, relating to the incident" referenced in an Investigative Activity Report from the Environmental Protection Agency ("EPA"), and "a complete copy of any files pertaining to the incident, along with all final reports/findings and fines that may have been accessed as a result of the investigation."

As I mentioned during our telephone conversation, please note that the Review Commission is not affiliated with the Occupational Safety and Health Administration ("OSHA"). The Review Commission is a federal agency created to decide contests of citations or penalties resulting from OSHA inspections of American workplaces. The Review Commission functions as an administrative court with established procedures for conducting hearings, receiving evidence, and rendering decisions by its Administrative Law Judges.

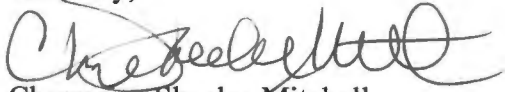
Based upon our telephone conversation, we are forwarding a copy of this letter and your request to the EPA at the following address:

U.S. Environmental Protection Agency
National Freedom of Information Officer
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460
Telephone: (202) 566-1667

We recommend that you send any follow-up correspondence directly to EPA at the above address or visit EPA's Web site at <http://www.epa.gov>.

Batcher
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Sincerely,

A handwritten signature in dark ink, appearing to read 'Charmaine Sheeler-Mitchell', with a large, stylized flourish at the end.

Charmaine Sheeler-Mitchell
FOIA Disclosure Officer

cc: U.S. Environmental Protection Agency, w/enclosure